

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Groundwater Protection List
DPR Regulation No. 08-005

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6800(b) of Title 3, California Code of Regulations. The proposed regulatory action pertains to ground water protection and would add pesticides to the Groundwater Protection List of pesticides that have the potential to pollute ground water.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on January 5, 2009. Comments regarding this proposed action may also be transmitted via e-mail <dpr08005@cdpr.ca.gov> or by facsimile at (916) 324-4088.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Pesticide Contamination Prevention Act (Act) (Chapter 1298, Statutes of 1985, section 1) added sections 13141 through 13152 to the Food and Agricultural Code (FAC). The purpose of the Act is to prevent pesticide pollution of California's ground water aquifers that may be used to supply drinking water.

FAC section 13145(d) requires DPR to establish, by regulation, a Groundwater Protection List of pesticides that have the potential to pollute ground water. The pesticides on the Groundwater Protection List are divided into two sublists. The first, section 6800(a), contains pesticides detected in ground water or soil pursuant to FAC section 13149. The second, section 6800(b), contains pesticides exceeding specific numeric values (SNVs) established by DPR. Data submitted by pesticide registrants in accordance with FAC section 13143(a) are compared to the established SNVs. The SNVs pertain to water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. These numerical thresholds enable

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

DPR to predict which active ingredients have the potential to leach to ground water.

If SNVs (established in section 6804) are exceeded, DPR places pesticidal active ingredients on the Groundwater Protection List in section 6800(b), provided they are labeled for use under the following conditions:

- (1) The pesticide is intended to be applied to, or injected into, the soil by ground-based application equipment or by chemigation; or
- (2) The label of the pesticide requires or recommends that the application be followed within 72 hours by flood or furrow irrigation.

DPR has identified 40 additional pesticidal chemicals that meet the criteria for inclusion into section 6800(b) based on their environmental fate characteristics and label use directions. This proposal would amend section 6800(b) to include these chemicals. The chemicals are the following: azoxystrobin; bensulfuron methyl; bispyribac-sodium; clomazone; 2,4-D, 2-ethylhexyl ester; 2,4-D, diethanolamine salt; 2,4-D, isooctyl ester; 2,4-DP-P, dimethylamine salt (dichlorprop-P, dimethylamine salt); dicamba, diglycolamine salt; dicamba, dimethylamine salt; dicamba, sodium salt; diflufenzopyr, sodium salt; dimethenamid-P; dinotefuran; dithiopyr; endothall, dipotassium salt; endothall, mono (N,N-dimethyl alkylamine) salt; fenoxycarb; fludioxonil; flutolanil; halosulfuron-methyl; imazamox, ammonium salt; imazapic, ammonium salt; imazethapyr, ammonium salt; malathion; mefenoxam; methyl parathion; (S)-metolachlor; penoxsulam; piperonyl butoxide; propanil; siduron; terrazole; thiamethoxam; thiazopyr; thiobencarb; thiophanate methyl; triclopyr, butoxyethyl ester; triclopyr, triethylamine salt; and uniconazole-P.

DPR has also identified one pesticide chemical, acrolein, that no longer meets the criteria for inclusion into section 6800(b) because it no longer exceeds the SNVs as required by law. This proposal would delete acrolein from section 6800(b).

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII B of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

DPR estimates that if local governments and schools applied the pesticides proposed to be listed in section 6800(b), this regulation could potentially result in additional reports submitted by local government and schools for a potential annual cost of \$16,000. However, this regulation does not require local governments or schools to apply the pesticides proposed to be added to section 6800(b), and they could avoid the additional reporting costs by applying alternative

pesticides that are not listed in section 6800(b), or by controlling the pest without the use of a pesticide.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that there may be minimal increased costs to any state agency resulting from the proposed regulatory action. Adding pesticides to section 6800(b) means that DPR would have to reimburse county agricultural commissioners for any additional pesticide use reports submitted for an annual cost of \$500.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with business in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. Although the proposed regulation is updating the list of pesticides that have the potential to pollute ground water in California, businesses and individuals would be required to report pesticide use of some of these pesticides. It is estimated that the lifetime cost for businesses and individuals would be \$80,000.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined that it is unlikely that the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456 and 13145.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 13144, 13145, and 13149.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comment on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Mark Pepple, Staff Environmental Scientist
Department of Pesticide Regulation
Environmental Monitoring Branch
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 324-4086

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Linda Irokawa-Otani, Regulations Coordinator
(916) 445-3991

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons, mandated by Government Code section 11346.9(a), may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Director

Date